UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

ADT, LLC[1]

Employer

and Case 05-RC-277535

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 2, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

ADT, LLC (the Employer), a limited liability company, with offices and places of business in Bowie, Maryland and Springfield, Virginia, is engaged in the business of the sale, installation, and service of residential and commercial security systems.[2] Office and Professional Employees International Union, Local 2, AFL-CIO (the Petitioner),[3] filed a petition with the Board seeking an overall (wall-to wall) unit of service technician, installer technician, processor administrator, technician engineer, and material handler employees employed at the Employer's Bowie, Maryland facility, excluding clerical employees, professional employees, temporary employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.[4] There are 30 employees in the petitioned-for unit. The Employer, however, contends that the single facility petitioned-for unit is inappropriate and that the only appropriate unit should also include an additional 41 employees employed in the same job classifications who work at its Springfield, Virginia facility, for a total of 71 employees.

The Petitioner has represented the employees at the Employer's Bowie and Springfield facilities since the 1990s. Since that time, employees who work at both facilities have been included as one unit in successive collective-bargaining agreements, including the most recent collective-bargaining agreement that was effective from May 22, 2018 to May 21, 2021.

The Petitioner contends that the petitioned-for single facility unit is presumptively appropriate because each facility has its own day-to-day supervision and employee interchange and contact between

[1] The Employer's and the Petitioner's correct legal names appear by stipulation of the parties at the hearing.
[2] The Employer stipulated, and I find, that during the 12-month period ending May 31, 2021, the Employer derived gross revenues in excess of $500,000. During the same period of time, the Employer purchased and received, at its Bowie, Maryland facility, goods valued in excess of $5,000 directly from points outside the State of Maryland. During the same period of time, the Employer also purchased and received, at its Springfield, Virginia facility, goods valued in excess of $5,000 directly from points outside the Commonwealth of Virginia. Additionally, the parties stipulated, and I find, that the Employer is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the National Labor Relations Act (the Act) and is subject to the jurisdiction of the National Labor Relations Board (the Board).
[3] The parties stipulated, and I find, that the Petitioner is a labor organization with the meaning of Section 2(5) of the Act.
[4] The parties stipulated to the job classifications to be included in the unit.

the two facilities is rare. Moreover, the Petitioner contends that the parties' bargaining history is not determinative, and that the Petitioner represents single facility units at the Employer's Columbia and Gaithersburg facilities in Maryland. The Employer, on the other hand, contends that the petitioned-for unit is inappropriate because the Petitioner seeks a fractured unit, that the historical bargaining unit includes the Bowie and Springfield employees, and that the Bowie and Springfield employees share a community of interest.

A hearing officer of the Board held a hearing in this matter by videoconference on June 14, 2021, at which time the parties were given the opportunity to present evidence and to state their respective positions on the record. Both parties filed post-hearing briefs. I have considered the evidence and arguments presented by the parties. As evidenced at the hearing, the sole issue before me is whether the petitioned-for unit of employees who work at the Bowie, Maryland facility is appropriate, or whether the appropriate unit should also include the employees who work at the Employer's Springfield facility.

Based on the record and applicable Board law, I conclude that the petitioned-for unit is not an appropriate unit for collective-bargaining purposes. As explained more fully below, I find that the appropriate unit should include the employees who work at the Springfield facility because the Employer has rebutted the presumption that the petitioned-for single facility unit is appropriate. Moreover, under the Board's traditional community of interest test, I find that the employees who work at the Springfield facility do not have a sufficiently distinct community of interest from the employees who work at the Bowie facility to exclude them from the unit. Accordingly, I am directing an election in a unit of service technician, installer technician, processor administrator, technician engineer, and material handler employees who work at the Employer's Bowie and Springfield facilities. To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. I will then present the relevant facts and reasoning to support my conclusions.

II. THE EMPLOYER'S OPERATIONS

The Employer installs and repairs alarm systems for residential and small business customers in several locations in the greater Washington, D.C. metropolitan area (the Beltway area), including Bowie, Maryland; Springfield Virginia; Columbia, Maryland; and Gaithersburg, Maryland. The Employer employs installer technicians, service technicians, material handler employees and processor administrators at all of the facilities. At the Bowie facility, there are 14 service technicians, 12 installer technicians, 3 processor administrators, and one (1) material handler, for a total of 30 employees. At the Springfield facility, there are 16 service technicians, 19 installer technicians, 4 processor administrators, and 2 material handlers, for a total of 41 employees.

The installer technicians install new alarm systems and devices, while service technicians repair existing alarm systems.[5] Service technicians include service technician II, III, IV, and V, but they all perform the same work. The processor administrators, also referred to as admin processors or clerical employees, perform the office work associated with the alarm systems. Material handlers work with the equipment and parts in the Employer's warehouses located at each of the Employer's facilities.

III. FACTS

A. Similarity of skills and duties

[5] Technical engineers, who were hired after the Employer's acquisition of a company called Defenders, are included in the installer technician job classification.

The Bowie and Springfield employees perform the same type of work with their job classifications,[6] and generally work the same schedule, Monday to Friday or Tuesday to Saturday, from 8:00 to 4:30 p.m. With respect to the technicians, the Employer has a central dispatch center in Rochester, New York that assigns work to all the technicians who work at the Employer's facilities. The dispatch center assigns this work using a computer system that takes into account the customer's location, the technician's assigned facility, and the technician's address. The assignments are sent directly to the employees' handheld units that are provided by the Employer. The installer and service technicians start their workday at their homes and drive to the customer's premises. With the exception of small handheld tools, the Employer provides technicians with the vans, the handheld units, and the cellphones necessary to perform their work. The technicians drive the same type of vehicles, use the same parts and equipment, and wear the same uniforms. The technicians go to their respective facilities about once per week to replenish their vehicles with parts or equipment necessary to perform their work. The processor administrators and material handlers work at their assigned facilities and do not work in the field, and there is no evidence that their skills and duties vary depending on the facility that they work at.

B. Supervision

The installer and service technicians are supervised by frontline install managers who work at each facility. In Bowie, the Employer employs one frontline install manager and one frontline service manager. In Springfield, the Employer employs two front line install managers and one frontline service manager.

When a frontline manager is absent from the Bowie facility, frontline managers from the Springfield facility will fill in, and vice versa, but the evidence does not show how often such interchange occurs. It appears that the material handler employees are also supervised by managers who work at their own facility. However, the processor administrators who work in Bowie and Springfield are supervised by the same supervisor. Frontline managers in Bowie and Springfield report to a regional manager (also called a general operations manager) who is responsible for certain facilities. Frontline managers who work in Bowie, Springfield, and Columbia report to the same regional manager.

C. Central control of labor relations and local autonomy

James Nixdorf, Director of Labor Relations, negotiates and administers collective-bargaining agreements and establishes the Employer's labor relations policies for all of the Employer's facilities. Each facility has its own shop steward, who may assist each other as needed. The Employer also handles human resources on a regional basis.

With respect to hiring, outside recruiters supply applicants for employment, and frontline and regional managers conduct interviews of the applicants. Human resources is involved in hiring and disciplinary decisions. A frontline manager generally handles less serious employee infractions, such as tardiness. More serious infractions, such as customer complaints about technicians, may bypass the frontline manager altogether and go directly to a regional manager and/or a regional human resources manager. Director of Labor Relations Nixdorf has ultimate responsibility for all disciplinary matters at the Employer's facilities, including Bowie, Springfield, Columbia, and Gaithersburg. Investigations of employees are handled by a regional human resources manager, and Nixdorf approves discipline issued to employees. Nixdorf is responsible for the discharge of any employee. Although the Employer does not

[6] The Columbia and Gaithersburg employees also have similar skills, functions, and working conditions to the Bowie and Springfield employees.

conduct regular performance reviews, frontline managers at each facility may perform ad hoc performance reviews if an employee's work performance is deficient.

D. Conditions of employment

The employees at both facilities are subject to the same company policies. The employees' wage rates for each job classification employed in Bowie and Springfield are the same, with the exception of the Employer's Tech Force Excellence program (TFE). On May 24, 2021, after the expiration of the collective-bargaining agreement, the Employer implemented the TFE program, which provides bonuses based on performance for the Springfield installer and service technicians only.[7] Processor administrators and materials handler employees are not eligible to participate in the TFE program. Aside from wages, the employees are subject to the same terms and conditions of employment set forth in the expired collective-bargaining agreement, including paid time off, health and welfare benefits, seniority provisions, and disciplinary policies.

Director of Labor Relations Nixdorf testified that since at least 2005, the Employer has maintained a combined seniority list for all installation and service technicians and a separate combined seniority list for the processor administrators employed at Bowie and Springfield. Nixdorf testified that the single seniority list for both facilities is maintained to determine the order of layoffs. However, Article X of the expired collective-bargaining agreement provides that layoffs will be based on seniority within each facility, and there is no evidence that the Employer has laid off employees or that the combined seniority list has been used to determine layoffs. In response to information requests by the Petitioner to the Employer for seniority lists for the Bowie and Springfield collective-bargaining agreement, the Employer provided the Petitioner with a spreadsheet containing Bowie, Springfield, and Gaithersburg employees. However, the shop steward for the Bowie facility, who has made similar requests for the Bowie facility, has received a seniority list from the Employer with only the Bowie employees included on the seniority list.

The Employer conducts product training for Bowie and Springfield employees. Most training is conducted by the frontline managers at each facility separately, and the employees perform most training on the computer or by Zoom. Once or twice per year, the Employer will conduct more formal training for new equipment for both Bowie and Springfield employees at the Springfield facility, which is the larger of the two facilities. Although the training is conducted for Bowie and Springfield employees at the same time, it appears that, for the most part, the employees are trained virtually and remain at their assigned facilities for the training.

E. Interchange of employees

Although there is no evidence of interchange with respect to the processor administrators and material handler employees, there is some evidence of temporary and permanent interchange with respect to the technicians. The Springfield office services customers in the greater Washington D.C. metropolitan area. Due to the backlog of work at a particular facility, the Employer may temporarily assign jobs to Springfield technicians to work for Bowie's customers, or vice-versa. Similarly, Bowie or Springfield employees may be assigned to work at the Columbia, Maryland facility. In addition, for safety reasons such as camera jobs that require the use of a ladder, the Employer will send two technicians to the jobsite.

[7] Under the program, technicians receive points that vary depending on the type of work that they perform. For example, the base value of a new installation is three (3) points. Generally, technicians who earn 70 points during a two-week pay period will be paid $150.00, plus $2.00 for each point earned over 70 points.

In those instances, the Employer may send one technician from Bowie and one technician from Springfield to the job, depending on the workload at each facility.

Employees are selected for this work based on their skill level and their proximity to the particular jobsite. Frontline managers from each facility will coordinate by e-mail to assign certain technicians to work outside of their assigned facility, but the evidence does not show that the technicians who are assigned temporarily to another facility are supervised by the frontline manager at the other facility.

With respect to the frequency of this temporary interchange, Director of Labor Relations Nixdorf testified that a technician can be assigned to work outside of their assigned facility for weeks at a time, and that this type of temporary interchange occurred frequently. However, the Employer did not provide any specific evidence of how often or when this temporary interchange of employees has occurred. Christopher Handon, who has worked as a service technician for Lanham-Bowie for about 17 years, testified that he performs the vast majority of his work for the Bowie facility. From in or about 2019 through 2021, he and other Bowie technicians have been assigned work out of the Columbia facility, but Bowie technicians have worked for Springfield's customers far less frequently.

The Springfield facility's geographic area includes Washington, D.C. and Virginia. Over the years, Handon has worked on service calls for a day or two at a time for the Springfield facility in the Washington, D.C. area. However, Handon has not performed work for the Springfield facility in Virginia because he does not currently have a DC-JS license, which is required to perform this work in Virginia.[8] Handon is familiar with only one Bowie technician, a transfer from the Springfield facility with the DC-JS license, who performed work for the Springfield facility in Washington, D.C. and Virginia from about 2019 to 2021. Handon rarely has any contact with Springfield employees; when a job requires two technicians for safety, he has worked in tandem only with technicians who work at the Bowie facility.

F. Collective bargaining history

I take administrative notice that in Case 05-RC-9805, on October 18, 1976, after a stipulated election, the Petitioner was certified as the representative of office clerical employees, servicemen, and operators employed at its greater Washington, D.C. area employed by American District Telegraph Company of West Virginia. At that time, the Employer only had one facility in the area, but its precise location is unknown. Subsequently, American District Telegraph Company of West Virginia became ADT Security Services, Inc., until 2012, when the Employer became a separate entity.[9] Since 1977, there have been successive collective-bargaining agreements covering the unit of Bowie and Springfield employees, including the most recent agreement that expired on May 21, 2021.

In or about the late 1990s, the Employer transferred operations in Prince George's County, Maryland, to Lanham, Maryland; in or about 2013 or 2014, the Employer transferred its operations from Lanham, Maryland to Bowie, Maryland.

[8] The Employer did not provide any evidence regarding Virginia's licensing requirements for technicians.
[9] Prior to 2012, ADT Security Services, Inc., was engaged in the business of residential, small business, and commercial work, and the collective-bargaining agreement included the employees who worked in Lanham, Maryland, Springfield, and a facility in Chantilly, Virginia. On or about June 30, 2012, ADT Security Services, Inc. separated into two legal entities, one of which was the Employer. Since that time, the collective-bargaining agreement has included employees who perform residential and small business work in Bowie and Springfield. The Chantilly, Virginia facility performs governmental work, which is performed by a separate entity.

On May 3, 2021, the Employer, by e-mail, notified the Petitioner that, based upon a petition received by the Employer from the majority of the Bowie and Springfield employees,[10] the Employer was withdrawing recognition from the Petitioner upon the expiration of the collective-bargaining agreement. On May 24, 201, the Petitioner, by e-mail, demanded that the Employer recognize and bargain with the Petitioner regarding only the Bowie unit.

The Petitioner also represents installer and service technicians, processor administrators, and material handler employees who work at the Employer's Gaithersburg and Columbia facilities. For the Gaithersburg facility, the Board issued a certification of representative after a stipulated election on February 26, 2003 in Case 05-RC-15511. For the Columbia employees, the recognition clause of a collective-bargaining agreement in evidence states that the Board certified the unit on April 6, 2004 in Case 5-RC-15680. In contrast to the Bowie and Springfield facilities, all of the collective-bargaining agreements for the Gaithersburg and Columbia employees have been separate.

G. Functional integration

The evidence shows that all of the employees at each facility are involved in the process of providing customers with alarm systems. The technicians install and repair those systems, while material handlers maintain the parts and equipment used by the technicians and processor administrators handle the office work associated with the alarm systems. Occasionally, Bowie employees may work for customers in Springfield's geographic area and vice-versa in the event of a backlog of work or for safety reasons. However, the evidence does not show that the Bowie and Springfield employees have contact with each other very often.

H. Geographic separation

The Bowie and Springfield facilities are located about 30 miles from each other, Bowie being northeast of downtown Washington, D.C., and Springfield being southwest of downtown Washington, D.C.

IV. ANALYSIS

A. Board Law

Section 9(b) of the National Labor Relations Act directs the Board to "decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by the Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." "[T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, 'if not final, is rarely to be disturbed.'" *Southern Prairie Construction v. Operating Engineers, Local 627,* 425 U.S. 800, 805 (1976) (citation omitted). There is nothing in the Act that requires the unit for bargaining to be the only appropriate unit or the most appropriate unit-the Act only requires that the unit for bargaining be appropriate so as to assure employees the fullest freedom in exercising their rights guaranteed by the Act. *Overnite Transportation Co.,* 322 NLRB 723, 724 (1996); *Brand Precision Services,* 313 NLRB 657 (1994); *Phoenix Resort Corp.,* 308 NLRB 826 (1992).

In *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 1 (2017), the Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) and returned to the Board's traditional community of interest test when the appropriateness of a petitioned-for unit is challenged. The

[10] A decertification petition with the Board was not filed.

Board applies a multi-factor to determine "whether the employees in the petitioned-for group share a community of interest sufficiently distinct from the interests of employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit." *PCC Structurals*, supra at 5. See also *Washington Palm, Inc.,* 314 NLRB 1122, 1127 (1994); *Alois Box Co.*, 326 NLRB 1177 (1988). The traditional community of interest factors considered by the Board include:

> whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

In *The Boeing Company*, 368 NLRB No. 67, slip op. at 3 (2019), the Board further clarified the applicable standard by employing the following three-step process evaluating the appropriateness of a petitioned-for unit:

> [f]irst, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

"[T]he traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit." *Id*., citing *Saks & Co.*, 204 NLRB 24, 25 (1973) and *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). In step two of the analysis, "the Board must determine whether the employees excluded from the unit 'have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.'" *Boeing Company*, supra at 4. "[W]hat is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit." *Id*. In applying the traditional community of interest test, the Board gives substantial weight to bargaining history. *Boeing*, supra, at 1, citing *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1106, fn. 2 (1979); See also *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988), citing *Metropolitan Life Insurance Co.*, 380 U.S. 438 (1965).

The Board has held that a petitioned-for single facility unit is presumptively appropriate. *Hilander Foods,* 348 NLRB 1200 (2006). The burden is on the party seeking to deviate from the presumptively appropriate unit to rebut the presumption. *Id., Greenhorne & O'Mara, Inc.,* 326 NLRB 514, 516 (1998). In order to determine whether the presumption has been rebutted, the Board considers traditional community of interest factors such as central control over daily operations and labor relations, similarity of skills, functions, an working conditions, the degree of employee interchange, the distance between locations, and bargaining history, if any. *J&L Plate,* 310 NLRB 429 (1993).

As a countervailing principle, [t]he Board is reluctant to disturb units established by collective bargaining as long as those units are not repugnant to Board policy or so constituted to hamper employees in fully exercising rights guaranteed by the Act. *Boeing*, supra at 1. The Board will not normally disturb an historical, multilocation unit absent compelling circumstances. *Met Electrical Testing Co., Inc.*, 331 NLRB 872 (2000) (citing *Trident Seafoods,* 318 NLRB 738 (1995), *enf'd in relevant part,* 101 F.3d 111 (D.C. Cir. 1996). The party challenging an historical unit bears the burden of showing that the unit is no

longer appropriate. *Id.* The evidentiary burden is a heavy one. See., e.g. *P.J Dick Contracting,* supra, at 151.

Before I turn to my analysis regarding the appropriate unit, I note that the Employer urges me to weigh the credibility of witnesses. A representation case is a formal proceeding, but it is investigatory, intended to make a full record, and is nonadversarial. Accordingly, consistent with NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11181 and 11185, I have not made credibility determinations in regard to testimony adduced at the hearing. See *Marian Manor For the Aged and Infirm, Inc.*, 333 NLRB 1084 (2001) ("…a preelection hearing is investigatory in nature and credibility resolutions are not made.").

B. Application of the law to the relevant factors

For the reasons that follow, I find that the Employer has rebutted the presumption that the petitioned-for single facility unit is appropriate. I further find that, under the Board's traditional community of interest test, the employees who work at the Springfield facility do not share a community of interest that is sufficiently distinct from the employees who work at the Bowie facility to exclude them from the unit.

1. The Employer has rebutted the presumption that the petitioned-for single facility unit is appropriate.

a. Skills, functions, and working conditions

The evidence shows that the employees who work in the Bowie and Springfield facilities have the same job classifications, skills, and functions, and receive the same training. I find that this factor favors the multifacility unit. *Prince Telecom,* 347 NLRB 789, 793 (2006); *Cheney Bigelow Wire Works, Inc.*, 197 NLRB 1279 (1972). The technicians at both facilities depart for work from their home based on work assigned to them by the central dispatch center, work the same schedule, drive similar vehicles and use the same parts and equipment to perform their work. Moreover, the employees are subject to the same wages, paid time off, health and welfare benefits, and disciplinary policies per the expired collective-bargaining agreement, with the exception of the performance-based bonus given to Springfield technicians under the Employer's newly implemented TFE program.

However, the Employer implemented the TFE program in May 2021, after the expiration of the collective-bargaining agreement. Prior to that time, technicians at both facilities were paid the same wage rates per the collective-bargaining agreement. Although the Board has held that substantial differences in wages is a factor used to determine whether a multifacility or single facility unit is appropriate, the evidence does not show how many technicians will receive a bonus each pay period or how much the average bonus that a technician will receive under the new TFE program. Moreover, if the Petitioner is certified to represent the employees, the Employer will be required to bargain over wages, including the TFE bonus program. Accordingly, the similarity in the Bowie and Springfield conditions of employment weigh in favor of a multifacility unit. Cf. *Miller & Miller Motor Freight Lines*, 101 NLRB 581 (1952).

b. Central control of labor relations and degree of local autonomy

The Employer's labor relations, including the negotiations of the collective-bargaining agreement and labor relations policies, are centrally controlled, and a regional human resources manager is responsible for both facilities. I find that this factor favors the multifacility unit. *St. Luke's Health System*, 340 NLRB 1171 (2003). I consider the Petitioner's reliance on *UPS Ground Freight, Inc.*, 931

F.2d 251 (D.C. Circuit 2019) to be misplaced. In that case, there was evidence of local autonomy over labor relations and considerable distance between the facilities to support the single-facility presumption.

With respect to the technicians, frontline managers appear to be responsible for some of the day-to-day operations of their own facility, but the same regional manager is responsible for the overall supervision of both facilities. With respect to assignments, a central dispatch center assigns the majority of work to the technicians who work at each facility. The same supervisor is responsible for processor administrators who work in Bowie and Springfield. The same regional manager supervises the frontline managers who work at both locations, and the Director of Labor Relations is involved in hiring and has the ultimate responsibility for disciplinary matters.

The Petitioner also relies on *Hilander Foods*, 348 NLRB 1200 (2006) to support its argument that the employees' day-to-day supervision by frontline managers supports the appropriateness of a single facility unit. However, in *Highlander Foods* , local supervisors assigned work, set wages, work schedules, and work rules, and had the authority to discharge employees. In the instant case, in sharp contrast to that evidence of local autonomy, work assignments are centralized, terms and conditions of employment have been generally established by the expired collective-bargaining history, and the frontline manager cannot independently hire or discharge employees. Accordingly, I find that the centralized control of labor relations, lack of significant local autonomy by frontline managers, and unified control of operations weigh in favor of a multifacility unit. *Budget Rent A Car Systems*, 337 NLRB 884, 885 (2002); *Dattco, Inc.*, 338 NLRB 49, 50-51 (2002).

c. Interchange

There is some evidence of temporary interchange between the Bowie and Springfield facilities when Bowie technicians are assigned to work for the Springfield facility, or vice-versa, to cover for backlogs of work or for safety issues. However, I do not consider this evidence to be particularly compelling, given the absence of specific evidence to show how frequently this type of interchange occurs. At most, the record shows that there was a permanent transfer of a Springfield technician to the Bowie facility, and that Bowie technicians occasionally work on jobs for the Springfield facility. Moreover, the evidence shows that the employees do not have frequent contact with each other. Accordingly, I find that this factor does not weigh in favor of a multifacility unit. *J&L Plate*, 310 NLRB 429 (1993); *Gray Drug Stores, Inc.*, 197 NLRB 924 (1972); *Carter Camera Shops*, 130 NLRB 276, 278 (1961).

d. Geographic proximity and functional integration

With respect to geographic proximity, the Bowie and Springfield facilities are located about 30 miles apart, each within the greater Washington, D.C. metropolitan area. However, this factor is not particularly significant to the analysis given that the Petitioner has represented both facilities under successive collective-bargaining agreements for 20 years. *Rollins-Purle, Inc.*, 194 NLRB 709, 710 (1972); *Super Value Stores*, supra at 136. Cf. *Arizona Public Service Co.*, 246 NLRB 400 (1981).

Functional integration generally refers to employees at separate facilities participating in various stages of an employer's operation so that they constitute integral part of a single work process. *Budget Rent A Car Systems,* supra, at 885. For example, functional integration exists when all of the employees in the sought-after unit work on different phases of the same product or a single service as a group. *Arvey Corp*., 170 NLRB 35 (1968); *Transerv Sys*., 311 NLRB 766 (1993). Another example of functional integration is when the employer's workflow involves all employees in the sought-after unit. Evidence

that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Sys*., supra.

In the instant case, the facilities are somewhat functionally integrated by virtue of the central dispatch office that determines where to assign work based upon an employee's and customer's location, which in turn starts the process of physically installing and servicing of alarm systems. Employees occasionally work at another facility to cover the backlog of work. However, I find that these facts, standing alone, do not show that a significant level of functional integration exists, given that there is insufficient evidence to show that Bowie and Springfield employees have frequent contact with each other. *Budget Rent-A-Car Systems,* 337 NLRB 884 (2002). Moreover, although the Employer contends that the facilities are functionally integrated by virtue of a combined seniority list, there is no evidence that the Employer has conducted layoffs or used such a combined list to lay off employees in contravention of the terms of the collective-bargaining agreement. Accordingly, I find that the functional integration factor does not weigh in favor of a multifacility unit.

e. Collective-bargaining history

With respect to the collective-bargaining history, for 20 years, the historical bargaining unit has included both the Bowie and Springfield facilities. The Petitioner contends that the Board is not bound by a collective-bargaining history resulting from a unit stipulated to by the parties rather than a unit determined by the Board. See *Laboratory Corp. of America Holdings,*341 NLRB 1079, 1083 (2004). Although that is true, I conclude that the significant history of collective-bargaining for the Bowie and Springfield unit weighs in favor of finding that the Employer has rebutted the presumption that the petitioned-for Bowie unit is appropriate, and the Petitioner has not presented any compelling reasons why the historical unit should be disturbed. *Met Electrical Testing Co., Inc.*, supra at 872. Moreover, since the Employer opposes the Petitioner's attempt to alter the historical unit, the Petitioner's desire to alter the historical unit by seeking to represent only the Bowie employees is not a compelling circumstance. Cf. *Crown Zellerbach*, 246 NLRB 202 (1979).

Although the Gaithersburg and Columbia facilities have a history of single facility collective-bargaining, and the employees have similar skills, functions and working conditions as the Bowie and Springfield employees, I find that this is outweighed by the long-standing history of collective-bargaining for the Bowie and Springfield employees as one unit. I also consider that the Petitioner's reliance on *Spartan Department Stores,* 140 NLRB 608 (1963) is misplaced. In that case, the Board relied on evidence of citywide bargaining in other units to support the appropriateness of the petitioned-for multi-location unit, but unlike the instant case, there was no evidence of a collective-bargaining history with respect to the petitioned-for unit.

In sum, although there is no significant interchange or functional integration of the Employer's operations, the centralized labor relations, lack of local autonomy, common supervision, similarity of skills, functions, and working conditions, and history of collective bargaining supports a finding that the Employer has rebutted the single-facility presumption and that the appropriate unit in this case includes the employees who work at both the Bowie and Springfield facilities. Although the Petitioner cites to *Airgas USA, LLC*, to support its contention that a single facility unit is appropriate, there was no evidence of any collective-bargaining history in that case. *Airgas USA, LLC,* Case 16-RC-262896, Decision on Review and Order, at fn. 1 (November 24, 2020).

2. Under the Board's traditional community of interest analysis, the Springfield employees should not be excluded from the unit.

I also find that the petitioned-for unit is also inappropriate under the Board's traditional community of interest analysis set forth in *Boeing*, supra at 1. The employees who work at the Bowie facility do not share a community of interest sufficiently distinct from the interests of the Springfield employees to warrant a finding that the employees who work at the Bowie facility constitutes a separate appropriate unit.

a. Internal community of interest

The evidence shows that the employees who work at the Bowie facility have an internal community of interest that is sufficient satisfy Step 1 of the Board's community of interest analysis. The employees within each job classification have the same skills, functions, and training. While the technicians work in the field, they go to the facility once a week to pick up parts and equipment. Material handlers and processor administrators perform their work exclusively at the Bowie facility. Frontline supervisors at each facility supervises the technicians. The employees at the Bowie facility share identical terms and conditions of employment as established by the expired collective-bargaining agreement. Since the employees in the different job classifications work together at every step of the process in order to install and service alarm systems, there is also evidence of functional integration within the Bowie facility. Based on the foregoing reasons, I find that the petitioned-for employees share an internal community of interest.

b. Shared and distinct community of interest

Although the petitioned-for unit has an internal community of interest, I find that the petitioned-for unit does not share a community of interest sufficiently distinct from the interests of the Springfield employees to exclude them from the unit. See, *PCC Structurals*, supra, and *Boeing*, supra. As set forth in more detail above, the employees at both facilities have the same job classifications, same skills, functions, training, and use the same parts and equipment to perform their work. The employees at both facilities generally have the terms and conditions of employment within their job classifications. Moreover, technicians who work at both facilities have overlapping supervision by virtue of regional managers, and processor administrators at both facilities have the same supervisor. In addition, the employees have a shared history of collective-bargaining. Although the evidence only shows sporadic interchange and contact among the Bowie and Springfield employees and no significant functional integration, these factors are outweighed by the overwhelming history of common collective-bargaining, similarity in skills, functions, and working conditions, overlapping supervision, and centralized labor relations.

c. Board's decisions in the particular industry

The Board does not have any industry-specific guidelines applicable to the Employer's operations or industry.

Accordingly, under the Board's three-part traditional community of interest test, I also find that the appropriate unit should include the unit employees who work at the Bowie and Springfield facilities.

Based on the foregoing, I find that the petitioned-for unit is inappropriate. The Employer has rebutted the single-facility presumption, and the Petitioner has not demonstrated that any compelling reasons exist to disturb the historical unit of the employees who are employed at the Bowie and Springfield facilities. Finally, the traditional community-of-interest factors support a finding that petitioned-for unit is inappropriate. Accordingly, I find appropriate the historical unit of installer technicians, service technicians, processor administrators, and material handler employees who work at the Employer's Bowie and Springfield facilities.

V. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time installer technicians, lead installer technicians, technician engineers, service technicians, including service technician II, service technician III, service technician IV, and service technician V, processor administrators, and material handlers employed by the Employer at the Employer's facilities located at 5001 Howerton Way, Suite A, Bowie, Maryland 20715 and 7399 Boston Boulevard, Springfield, Virginia 22153; excluding: all clerical employees, professional employees, temporary employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

During the hearing when the Petitioner was asked if it wished to proceed to an election if the Regional Director ordered an election in a different appropriate unit, the Petitioner indicated that it wished to proceed to an election in any unit found appropriate. Thus, I will direct an election below, conditioned upon an adequate showing of interest in the above described unit. Petitioner must provide an adequate showing of interest in the unit found appropriate to the Regional office by July 13, 2021.

DIRECTION OF ELECTION

If an adequate showing of interest is provided by the Petitioner, the National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote on whether or not they wish to be represented for purposes of collective bargaining by Office and Professional Employees International Union, Local 2, AFL-CIO.

A. Election Details

The election will be held on July 28 and July 29, 2021 from 7:00 a.m. to 10:00 a.m. in the training room of the Employer's facility located at 5001 Howerton Way, Suite A, Bowie, Maryland 20715 and on July 28 and July 29, 2021 from 7:00 a.m. to 10:00 a.m. in the training room of Employer's facility located at 7399 Boston Boulevard, Springfield, Virginia 22153.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 3, 2021, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by July 13, 2021. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A

sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice prior to 12:01 a.m. on July 23, 2021 and copies must remain posted until the end of the election. A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

Pursuant to the stipulation of the parties, the Notice of Election and ballots will be provided in English.

E. Election Protocols and Required Certifications due to the COVID-19 Pandemic

As stipulated to by the parties, given the COVID-19 pandemic, in order to protect the voters, observers, Board agent, and others during the election and ballot count, the Employer will:

(a) Provide three separate tables that will be placed more than 6 feet apart in each voting area: (1) one for the Board agent; (2) one for the Employer's Election Observer; and (3) one for the Petitioner's Election Observer. A chair will be placed at each table.
(b) Provide a separate table in each voting area with a spread of approximately 50 individual, disposable pens or pencils without erasers;
(c) Place markings on the ground throughout each voting area, and in the immediate vicinity outside of each area, to ensure proper social distancing for voters (i.e. 6 feet of space between voters) and to ensure that the voting lines within the area do not exceed 10 voters at a time;
(d) Place signage throughout each voting area, and in the immediate vicinity outside of each area, to inform voters of the need to wear CDC-conforming masks in all phases of the election, including the pre-election conference, in the polling area or while observing the count and maintaining proper social distancing (i.e. 6 feet of space between voters);

(e) Ensure that each voting area has a separate entrance and exit for voters, with markings on the floor to remind/enforce social distancing and/or sufficient room for voters to maintain 6 feet of space between one another when entering and exiting the voting area;
(f) Provide glue sticks or tape to seal challenged ballot envelopes;
(g) Provide plexiglass barriers of sufficient size to separate Election Observers and the Board Agent from voters and each other, pre-election conference and ballot count attendees, as well as masks, hand sanitizer, gloves and wipes for Union personnel, Election Observers, and employees who approach the table to vote;
(h) Provide an inspection of each polling area by video conference no earlier than 48 hours before the election but no later than 24 hours before the election so that the Board agent and Union personnel can view each polling area; and
(i) Provide written certification, no earlier than 48 hours before the election but no later than 24 hours before the election, that each polling area is consistently cleaned in conformity with established CDC hygienic and safety standards.

Given the COVID-19 pandemic, in order to protect the voters, observers, Board agents, and others during the election and ballot count, the parties will provide me with written certification within 14 days preceding and 14 days after the date of the election, if any individuals who have been, will be or were present in the facilities prior to and on the dates of the election:

(a) Have tested positive for COVID-19 (or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the past 14 days;
(b) Are awaiting results of a COVID-19 test;
(c) Are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath; or
(d) Have direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

Given the COVID-19 pandemic, in order to protect the voters, observers, Board agents, and others during the election and ballot count, each party, party representative, and observer participating at the pre-election conference, serving as an election observer, or participating in the ballot count, must provide me with written certification that within the preceding 14 days:

(e) Have tested positive for COVID-19 (or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the past 14 days;
(f) Are awaiting results of a COVID-19 test;
(g) Are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath; or
(h) Have direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

Given the COVID-19 pandemic, in order to protect the voters, observers, Board agents, and others during the election and ballot count, the parties also agreed that:

(a) That a total of three voter lists per election site - one per observer and one for the Board agent – will be used during the course of the election, and the Board agent's voter list will be considered the official voter list for the election;
(b) That no more than two voters should be present in each voting area at one time;
(c) That no more than one agent from each party is permitted to attend the pre-election conferences/instructions to observers at the ballot count;
(d) In order to be permitted to be physically present at the pre-election conference, serve as an election observer, or participate in the ballot count each party, party representative, and observer will provide the required certification(s) to me;
(e) Individuals who are not a party, party representative or an observer, will be required to stay at least 15 feet away from the Board agent(s) at the pre-election conferences/instructions to observers or the ballot count; and
(f) I have the discretion to cancel the election if the parties fail to provide the required written certifications and/or based on the provided certifications consider whether the election should be held as scheduled.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: July 9, 2021

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director
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